

No. 19-1342

In The
Supreme Court of the United States

LEE MULCAHY, PhD, pro se

Petitioner,

v.

ASPEN PITKIN COUNTY HOUSING AUTHORITY
("APCHA")

Respondent.

On Petition for Writ of Certiorari
To The Colorado Supreme Court

PETITION FOR REHEARING

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SUPREME COURT, U.S.

CERTIFICATE OF PRO SE PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for purposes of delay. Moreover, I certify that on October 30, 2020, I emailed a copy of this petition to the people listed below:

Thomas Fenton Smith III
Attorney for APCHA

Signature: _____


Edward Lee M. Casey 10/30/2020

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PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, Lee Mulcahy respectfully petitions this Court for an order granting rehearing and vacating the Court's October 5, 2020, order denying certiorari, and disposing of this case by granting the petition for certiorari, vacating the judgment, and remanding to the Aspen Pitkin County district court for further consideration.

As grounds for this petition for rehearing, petitioner states the following:

ISSUES PRESENTED FOR REVIEW

Did the District Court err by denying Defendant-Appellant Edward L. Mulcahy, Jr.'s ("Mulcahy") C.R.C.P. 60(b) motion to vacate the underlying judgment for procedural due process violations where Mulcahy was pro se in District Court; where the judgment severely impacts Mulcahy's property rights by ordering him to sell his house and home; where, in obtaining the judgment, Plaintiff-Appellee Aspen Pitkin County Housing Authority ("APCHA") disregarded almost every single procedural requirement in state court designed to ensure fair litigation practices, including improperly electing into C.R.C.P. 16.1's expedited procedure, failing to serve orders on Mulcahy that would have apprised him of case management procedures, failing to serve discovery disclosures of any kind on Mulcahy, and failing to file a certificate of compliance with the court; and, further compounding these issues, where the District Court itself failed to follow-up or otherwise ensure procedural requirements were being met before entering early summary judgment in APCHA's favor?

STATEMENT OF THE CASE

Mulcahy is an eccentric and outspoken artist in Aspen, Colorado who is an Eagle Scout; holds a master's degree in 19th Century French Art and Literature; a Ph.D. in humanities; and has had his art shown in various galleries around the

world, including the Aspen Institute. [CF, p. 294-95 (Mulcahy resume)]. He is politically active; has frequently voiced his opposition to local government leaders in public forums, including APCA; and has stood up and challenged local government and prominent businesses on various matters, including labor and employee rights. [CF, p. 109 ¶ 3, 123 ¶ 5, 1014 (discussing Mulcahy's conflicts with the Aspen Skiing Company, Aspen valley's largest employer, for distributing unionization information to fellow employees and the resulting National Labor Relations Board settlement with the company)]. Needless to say, Mulcahy is well known in Aspen's small, approximately 7,250 resident community, and frequently a target for those government leaders he speaks out against. [See CF, p. 573 ¶ 3].

The particular issues here stem from Mulcahy's ownership of property he received in 2006 from APCA, the entity responsible for administering the affordable housing program in Aspen and Pitkin County. In conformance with requirements for receiving the property, which was initially a vacant lot; Mulcahy, with the help of his now deceased father, designed and built his own residence on the property. [CF, p. 123 ¶ 4, CF, p. 124 ¶ ¶ 8-9]. Notably, with his father being diagnosed with a terminal illness while they were constructing the home, Mulcahy designed part of the home to allow him to care for his approximately 85 year old mother instead of placing her in a nursing home. Mulcahy's mother does, in fact,

currently reside with him. [CF, p. 986, 1394 (letter with Mulcahy and his mother, Sandy, sharing the same address)]. Mulcahy's home represents an important, last remaining vestige of his relationship with his father.

In 2015, with Mulcahy having publicly criticized local government individuals that have authority or influence over APCHA, and with Mulcahy having failed to respond by a deadline indicated in a Notice of Violation ("NOV") containing default-type findings of deed restriction violations – which, notably, was later found out to be issued almost 30 days prematurely and while Mulcahy was known to be traveling for his family's charity work in Kenya – APCHA filed the underlying action to enforce that NOV and compel Mulcahy to sell his house and home. [CF, 18 ¶¶ 19-20]. In doing so, however, APCHA disregarded almost every single safeguard incorporated into Colorado's civil procedure rules to protect the rights of litigants. Such actions, and the District Court's failure to catch them, deprived Mulcahy of due process and a full and fair opportunity to defend against APCHA's claims seeking to deprive Mulcahy of house and home. Mulcahy discusses these aspects below.

I. APCHA IMPROPERLY FILES THIS ACTION AND DISREGARDS EARLY ORDERS OF THE COURT DESIGNED TO APPRISE DEFENDANTS OF THEIR RIGHTS AND OF CASE PROCEDURES

APCHA filed this lawsuit in December 2015 seeking an order from the District Court forcing Mulcahy to sell his house and home based on his alleged failure to exhaust administrative remedies. [CF, pp. 1-20, 1404-21 (Complaint and attached exhibits)]. Specifically, APCHA asserted it was entitled to judgment as a matter of law because Mulcahy had failed to timely request a hearing with APCHA in response to a August 25, 2015 NOV alleging default-type deed restriction violations.¹ Accordingly, APCHA asserted Mulcahy had failed to exhaust his administrative remedies and that the District Court could consider none of Mulcahy's defenses. [CF, pp. 16-19, 99 (Complaint and summary judgment motion)].

The case was assigned to District Court Judge Seldin, who had been appointed to the bench only a month prior. [Jason Auslander, *Assistant attorney picked as new judge*, THE ASPEN TIMES, Sep. 16, 2015, available at <https://www.aspentimes.com/news/assistant-attorney-picked-as-new-judge/> (indicating Judge Seldin began his judgeship November 1, 2015)]. Mulcahy, unable to afford a

¹ Notably, the alleged deed restriction violations that gave rise to the NOV stemmed from an anonymous complaint against Mulcahy conveniently around the same time period Mulcahy had been publicly criticizing APCHA authorities. [See CF, p.3 (indicating the inquiry came as a result of a complaint)]. Due to APCHA's complete disregard of discovery in this action, that complaint has never been produced by APCHA.

\$20,000 retainer at the time, acted pro se in the District Court proceedings through the rendering of a summary judgment order in APCHA's favor. [CF, p. 127 paragraph 26].

1. Due to word count, the rest of the brief is omitted but can be found in **Exhibit 6**.

AFFIDAVIT

STATE OF COLORADO
COUNTY OF PITKIN

Lee Mulcahy, being duly sworn, deposes and states as follows:

I, Lee Mulcahy, state the following:

1. Aspen, Colorado, is a town of 6788 residents. APCHA controls over 3300 "units" in Pitkin County. Some "units" are 4 bedroom homes. With great power comes great responsibility to exercise that power justly. The apostle Paul wrote in *Ephesians* 6:12 "For our struggle is not against flesh and blood, but against the rulers, against the powers of this dark world...."

2. I am an Eagle Scout and have volunteered thousands of hours for my community. Our Sheriff gave me a hug outside our local library and told me he believes that this whole eviction attempt is a "witch-hunt." I am grateful for many many things. I am an artist; I am not an attorney. My paintings are in and have been shown in museums in both Berlin and Nairobi and galleries all over the world including Aspen, Carbondale, Prague and Beijing. I served as a Trustee for the Aspen Historical Society for eight years until asked to resign after I tried to unionize Aspen Skico workers.

3. Critically, I lost in a landslide in the last election to the Mayor of Aspen, Steve Skadron, in a 2 man race. My family gathered over 2000 signatures in front of our courthouse on a petition delivered to both the local judge and Aspen City Council "for a peaceful resolution to allow a public hearing on our eviction" in front of city hall and our local grocery store. The outpouring of love and support from the community signing was overwhelming. The signatures for a hearing were ignored by local judge "Sneaky" Seldin & the local politicians except for the Board Chair of the County commissioners, a local rancher, Steve Child.

4. Last week, my family was very grateful for two things: The United States Court of Appeals in the 10th Circuit sided with us. See **Exhibit 1** for brief.

Secondly, the current Board Chair of the Pitkin County commissioners who is up for re-election stated in a debate "I think APCHA needs to treat people better.... I'm on Lee Mulcahy's side. Other people have been treated unfairly." See **Exhibits 2 & 3** or https://www.aspendailynews.com/news/county-commissioner-candidates-make-their-case/article_bd181888-0f60-11eb-86a2-279e2655f300.html or <https://www.aspentimes.com/news/housing-pandemic-response-divide-pitkin-county-district-4-candidates-at-squirm-night/>. Commissioner Child, if re-elected, stated in a letter to the editor this week:

"There are unanswered questions in the public eye revolving around the timeline when the notice of violation was sent and received, the apparent favoritism for some and unequal treatment for others who were violating guidelines during that general time period, and about what occupations should be counted as employment for APCHA eligibility. There are two areas of the APCHA rules that I think should be reviewed and changed as necessary to make them fair and equitable to everyone. A hearing before the APCHA board should be mandatory and not optional for anyone accused of a major violation of the rules which could lead to eviction or a large fine, and the sweat equity someone puts into building or remodeling their own home should be counted as employment.

Lee admits he made a mistake a few years ago by not requesting a hearing to the Notice of Violation he received. It would be unconscionable for the city to evict Lee and his mother

from their home now without holding a hearing regarding this notice, and Lee's work hours spent building his own house should be taken into account towards his required employment in the county."- Pitkin County commissioner board chair & rancher Steve Child See **Exhibit 4** or

https://www.aspendailynews.com/opinion/time-to-hold-mulcahey-hearing/article_4a4e1178-18a1-11eb-882c-dbcbae889961.html

5. We worry that local judge "Sneaky" Seldin may be captured by the out of state Chicago billionaire that owns the Aspen Ski Company. Like any monopoly, Skico does not like to be criticized. See Mulcahy vs. Skico, Supreme Court case 19-1229 for captured local judge Seldin's orders which was denied certiorari.

Society moves forward by acts of peace. After our victory in the 10th circuit, we will propose a settlement to APCHA that involves paying the newly instituted fines (instead of eviction), performing 3000 community service hours & to be allowed to show compliance as an artist per APCHA's rules while renting the house/artist studio we built. APCHA has steadfastly refused to look at my artistic records APCHA requested in an email on October 14, 2015, when my family returned from our clean water philanthropic Christian mission in Sotik, Kenya - after I missed APCHA's deadline.

According to a recent letter to the editor from APCHA's former executive director, APCHA's investigation started six days before my Father passed and ended September 9, 2020 well before APCHA had decided what to count as artistic records as evidenced by the APCHA October 14, 2015 email provided as **Exhibit 5**. For letter to the editor, please see https://www.aspendailynews.com/opinion/inexplicable-misleading-downright-indefensible/article_2936faf0-1a4e-11eb-a27f-9b0c8ee46f63.html

6. This eviction has been controversial and we are grateful for the community's support. Recent examples: "I figure we are all tired of hearing about this Mulcahy standoff. I don't know the dude, may not even like him if I did, but the man is fighting for his home and his mom — what kind of feeling are we supposed to take away from that? A man defends his

home. Bottom line. And jeez, he defends his Mom next. What else is a guy supposed to do?" - Janet Mohrman from

https://www.aspendailynews.com/opinion/opening-the-door/article_b5ed4504-ca1b-11ea-81e7-f76475497838.html Another stated, "Where are the adults in Aspen? Having followed the saga of Lee Mulcahy for the past several years, I have a question for the people of Aspen. Where are the adults?" - Chris Neuswanger in https://www.aspendailynews.com/where-are-the-adults-in-aspen/article_ccfa32bb-79bf-505c-bbb9-fcd61b9ad573.html

7. It is necessary to point out that APCHA's attorney Thomas Fenton Smith III is highly controversial, had to resign from the town of Basalt, and was investigated by the Colorado Supreme Court's Attorney Regulation Counsel. A simple google search will provide multiple news stories.

8. I have told the local judge my willingness to pursue settlement and peace. As recently admitted by APCHA in the Court of Appeals, neither APCHA nor the judge has provided us a required case management conference where settlement is to be discussed. I grew up in Texas and am very grateful to my late Dad for helping me study at both universities in Texas and in Paris at the Sorbonne, France where liberty is valued more than life. I'm also grateful to have inherited my parents' wonderful sense of humor and I try never to lose it in dealing with government petty tyrants.

Recently court rulings in federal court and local politicians' support should be a huge wake up call to local politician turned assistant county attorney turned local Judge Chris Seldin. As I write, there are protests and riots all over the nation due to injustice. I marched peacefully in #BLM (Black Lives Matter) five years ago. What our judges must realize is that you all cannot subjugate, prosecute and humiliate the people you were appointed to serve without us little people eventually standing tall. Civil disobedience, after all, is putting oneself in harm's way to bring attention to a problem and bring change.

9. I've often wondered why Judge Seldin nor APCHA charged me with contempt. However, the outcome would not be decided by a judge but by the determination of a jury of my peers. Recent unexpected losses by the government out West against the Bundy ranching family in both Oregon and Nevada should be a wake up call to government overreach.

10. Our Sheriff has classified Aspen as a sanctuary city from federal immigration law. People often joke with us that if we were illegal aliens, the Sheriff would not be enforcing our eviction. The English used the law to evict the native Irish from their own homes for nearly seven centuries. When the Brits started invading Americans' homes as power often does, the clock started ticking for the King's reign in his "colony."

Our nation's forefathers revolted. Our Declaration states: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it." We have chosen to resist. Why?

11. This whole eviction is based on "bullshit," specifically a prematurely issued notice of violation. APCHA issued the notice of nearly a month prior than its rules allowed. The first compliance letter went out July 17, 2015 provided. The APCHA guidelines provided citizens with a 60 day grace period before a notice of violation would be sent and was indicated on the letter. (60 days would have been until September 15, 2015). As the record indicates, APCHA issued the notice of violation on August 25, 2015.

12. "At its dark heart, this case wasn't just about APCHA and its corrupt practices, but about making an object lesson on anyone who dared to criticize the owner of the company that owns the company town, billionaire Lester Crown," Mulcahy's email said. "In a

contract, both sides have to play fair. The city of Aspen failed to play by their own arbitrary rules throughout and consequently shouldn't receive the benefit of our family's blood, sweat and tears. Sadly, our justice system is in poor shape." - I stated here:
<https://www.aspentimes.com/trending/colorado-supreme-court-will-not-hear-mulcahy-case-over-aspen-home-ownership/>

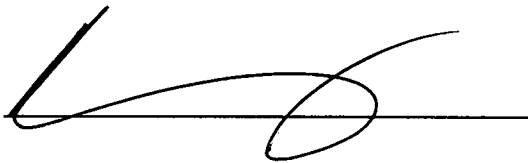
13. I do construction Monday - Friday 7:30am- 3:30pm and keep my studio gallery open by appointment on weekends. I hold a city business license and a member of the Aspen Chamber. The irony is that a town that brags about its artistic prowess and an intellectual center ("Athens of America") while being covertly run by billionaire owner of Aspen Skiing and General Dynamics Lester Crown. The eviction of an artist as war profiteer that has a penchant for bribery.

14. Regarding freedom of thought and expression central to artists, free discourse in the best sense of the Enlightenment is not simply restricted through state sanction of punishing people but also through social scorn that makes it impossible to have a career or have your reputation in any kind of working order because you express views

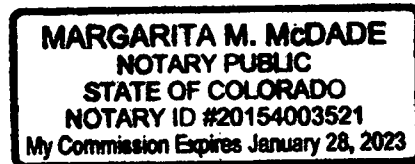
(anti-government, anti-APCHA) that deviate from state sanctioned narratives or orthodoxies - ones that often future generations come to regard as wrong.

I hope our community can resolve this tense situation through negotiated settlement.

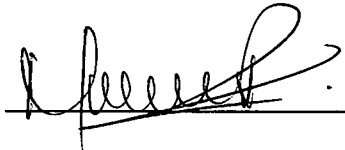
After all, God's greatest commandments are to love your God and your fellow man.



Edward Lee Mulcahy



Subscribed and sworn to before this __30th__ day of October, 2020. I am duly authorized under the laws of the State of Colorado to administer oaths.

 Notary Public

Notary Public, State of Colorado, Notary ID _____ My commission expires 1/28/23.

CONCLUSION


To deprive an individual of his house and home, nonetheless one I built myself, without a full and fair opportunity to respond to allegations leveled against him is not justice. It runs completely counter to the basic foundations of our democratic society and the notion, that at a minimum, when a government wants to intrude on private property rights, it must do so in a fair way that allows an interested party to investigate asserted claims and be heard in a meaningful manner before such an intrusion occurs.

Here, not only did APCHA deprive me of the due process at the administrative level by prematurely issuing a NOV; it then compounded that derivation in state court by denying me discovery, an opportunity to be apprised my rights and applicable case procedures, and a fair opportunity to contest the NOV and investigate my defenses. In

such circumstances the United States Constitution is clear, where a procedural due process violation occurs any resulting judgment is void and cannot stand. APCHA's dereliction of its procedural duties in this case constitutes a clear violation of my Constitutional due process rights, should not be rewarded, and my family should be given a full and fair opportunity to defend against APCHA's claims before my house and home are stolen or invaded by an out of control government that violates its own laws with impunity. I love my country; but I will die to defend freedom and liberty.

WHEREFORE, pro se petitioner requests the Court to accept the previously rejected writ of certiorari or in the alternative, order parties into mediation immediately if local Aspen Judge Chris Seldin fails to do so.

Respectfully submitted,



Edward Lee Mulcahy 10/30/2020

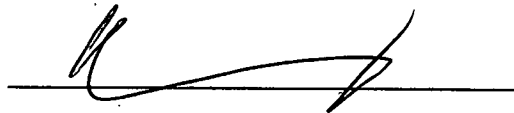
UPDATE AND CERTIFICATE STATEMENT

Local judge Chris Seldin has entered a new November 10th, 2020 order authorizing law enforcement to utilize “forcible entry” provided as **Exhibit 7**. In his order, he claimed that “Mulcahy requested the hearing and the “status conference” was scheduled as a hearing. This is false. Previous court orders **Exhibits 8 & 9** indicate otherwise.

As requested, I have sent a \$200.00 filing fee pursuant to Rule 38(b). The grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. APCHA broke the law and this whole case rest on a “bullshit” illegal notice of violation. My mentors at church tell us: “Don’t give up.”

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements as it contains less than 3000 words. I acknowledge that this brief may be stricken if it fails to comply with any of the rules.

A handwritten signature in black ink, appearing to read 'Edward Lee Mulcahy', is written over a horizontal line.

Edward Lee Mulcahy 12/10/2020

**Additional material
from this filing is
available in the
Clerk's Office.**